

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

: MDL NO. 1355
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: SECTION: L
:
: JUDGE FALLON
: MAG. JUDGE AFRICK
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IN RE: PROPULSID
PRODUCTS LIABILITY LITIGATION

THIS DOCUMENT RELATES TO ALL CASES

**JOINT REPORT NO. 13 OF
PLAINTIFFS' AND DEFENDANTS' LIAISON COUNSEL**

Plaintiffs' Liaison Counsel (PLC) and Defendants' Liaison Counsel (DLC) jointly submit this Report No. 13.

I. Update of Rolling Document Production and Electronic Document Production - (PTO 2 - IX)

DLC advises the December production of documents which is scheduled for January 15, 2002 comprises approximately 291,042 pages of document production, the majority of which are Beerse documents delivered on CD-ROM.

Since December 14, 2001, Defendants produced the ARISg database. On December 17, 2001 Defendants produced the Navigator database. There are five databases which Defendants have not produced. PLC and DLC are discussing the production of these databases. Defendants review of e-mails is ongoing but has been hampered by technological difficulties as production in this manner requires

use of new and developing applications.

DLC forwarded to PLC a production of approximately 135 videotapes as part of the media production. On December 10, 2001, PLC and DLC reached an agreement whereby DLC would duplicate the videotapes, at the expense of PLC. PLC is still awaiting production of the videotapes. Further, DLC advised in November, 2001 that there were additional media to produce and PLC is awaiting receipt of these videos.

The parties are continuing discussions regarding a nominee for Special Master as required by Section H(3) of PTO 10.

II. State Liaison Counsel - (Minute Entry, November 16, 2000)

PLC has had a number of conversations and meetings with various members of the state liaison counsel. Members of the state liaison counsel were actively involved in reaching a resolution regarding the injunction motion. Further, state liaison counsel have been involved in setting some depositions through the coordination process between the defendants, the states and the MDL. DLC and PLC are having discussions regarding coordination of depositions to be taken pursuant to the coordination agreement. PLC has advised DLC of requests made to schedule depositions and obtain coordination with the states. On January 7, 2002, PLC wrote DLC and requested assistance in coordinating and scheduling their depositions. The parties will be prepared to discuss this further at the January 11, 2002 Monthly Status Conference.

III. Patient Profile Form and Authorization

As of Tuesday, January 8, 2002, Defendants have received 1251 Patient Profile Forms (PPFs). 60 are currently overdue, and 12 PPFs will become due within thirty (30) days. PLC and DLC continue to communicate directly with plaintiff counsel whose PPFs are overdue.

At the January 11, 2002 Status Conference, DLC will bring for hearing a Motion to Compel and Secondly to Dismiss against plaintiffs, Marlene Hartman, Barbara Ray, Irene Guitroz, Dorothy Jordan, Jeremy Chesteen, Temple Clark, Robert Ketchum, Gregory Batiste, Sr., Terri Terrebonne, as next friend to Alton Terrebonne, Adrienne Schneider, Vickey Maples, Linda Sheilds, and Early Washington for their failure to provide Defendants properly executed authorizations for the release of medical, mental health and/or employment records in violation of Pre-Trial Order No. 9. Defendants will withdraw this Motion as to plaintiffs, Takala Freeman, Theresa Ziegler, Stephanie Baumwell, John Weaver and Billy Endicott, as they have submitted the necessary authorizations to Defendants.

The parties are still discussing the submission of restricted authorizations that have been received by Defendants. PLC objects to the use of defendants obtaining blanket authorizations. If this issue is not resolved in the next two weeks, Defendants will bring a Motion to Compel against plaintiffs who have submitted such authorizations and will set it for hearing at the February, 2002 Status Conference . The parties will be prepared to discuss this further at the January 11, 2002 Monthly Status Conference.

Since the November Monthly Status Conference, PLC has written numerous counsel and assisted DLC in gathering PPFs that have alleged deficiencies. PLC advises it will continue to assist in obtaining PPFs from plaintiffs' counsel.

IV. Subpoena to FDA

On December 29, 2001, PLC received from DLC a number of documents that were produced by the FDA following the FDA's notification that PLC did not receive certain documents from DLC.

These documents are being reviewed to assure that a complete production of documents responsive to the subpoena has been received by PLC.

V. Service List of Attorneys

The parties will present the Court with the most current Master List of all Counsel, which will contain, where available, e-mail addresses.

VI. Ongoing Studies/Subpoena to BevGlen

The parties have had discussions regarding the production of materials in accordance with Pre Trial Order No. 13 (Ongoing Studies). On December 13, 2001 DLC forwarded correspondence to PLC requesting the PSC to supplement the responses to Defendants' interrogatories regarding ongoing studies, including any involvement of Dr. William Shell upon whom Defendants served a subpoena duces tecum. DLC sent follow-up correspondence to PLC on December 27, 2001 and January 4, 2002 requesting the same. PLC has informed DLC he will supplement Plaintiffs' response to Defendants' discovery regarding Ongoing Studies this week; however, an issue remains regarding the redaction of plaintiffs' identities who were study participants in Dr. Shell's study. PLC has objected to Defendants request for such information.

Further, PLC has requested ongoing studies from defendants. On December 13, 2002 DLC wrote PLC regarding the production of such information. PLC has requested further clarification of the letter and the parties are having further discussions concerning the production of ongoing studies.

Defendants have contacted BevGlen's representative on numerous occasions inquiring about the certification for records produced by BevGlen and have been informed that he is federal expressing the document to Defendants on Wednesday, January 9, 2001. Upon receipt, Defendants will forward a copy to PLC. If the certification is not received PLC intends to reset the Motion to Compel for hearing.

VII. Third Party Subpoena Duces Tecum Issued by PSC

PLC has received the majority of certifications from counsel for Defendants. As of January 8, 2002 there remain 3 certificates which need to be produced. Several questions arose regarding certifications and DLC recently addressed many of the issues. The parties will be prepared to discuss this at the January 11, 2002 Monthly Status Conference.

PLC is awaiting documents subpoenaed from Covance and to be provided to PLC and DLC.

PLC will advise the court as to the status of third party subpoena duces tecums as issues arise in the course of discovering information.

VIII. Motion to Enter Scheduling Order for Motion and Hearing on Class Certification.

DLC and PLC have had numerous discussions regarding revisions to Pre-Trial Order No. 15 (Motion and Hearing for Class Certification). After discussions among the parties and the court, April 10, 2002 is selected as the re-scheduled class hearing date and the parties will submit a revised Pre Trial Order No. 15 prior to the January 11, 2002 Monthly Status Conference.

On January 3, 2002 PSC filed with the court a proposed trial plan and Motion together with brief for Class Certification. Depositions of class representatives and plaintiffs experts are scheduled. The depositions of the class representatives will take place on January 9 and 10, 2002. Depositions of plaintiffs' experts are also being scheduled. The parties will be prepared to discuss this in more detail at the January 11, 2002 Monthly Status Conference.

IX. Plaintiffs' and Defendants' Respective Requests for Production of Documents

On October 31, 2001, PLC wrote DLC regarding outstanding discovery due from defendants in a Tennessee action that was removed to the MDL. In early December, 2001 defendants provided responses to the discovery. Tennessee counsel indicated that they do not believe the discovery was properly and fully responded to. PLC will be scheduling a Local Rule 37.1 conference to address the Tennessee discovery.

On June 5, 2001, Defendants served their Request for Production of Documents Propounded to Plaintiffs - Set No. Two. Defendants are waiting for a response.

X. PSC's Petition for an Order Securing an Equitable Allocation of Counsel Fees and Costs for Common Benefit Work

On receipt of the order signed December 26, 2001 relating to the PSC's Petition for an Order Securing an Equitable Allocation of Counsel Fees and Costs for Common Benefit Work, copies were distributed to all MDL counsel and to a number of state counsel. PLC has also forwarded to a number of state counsel the agreement for states to participate with the MDL. As signed agreements are received from state counsel, PLC will advise DLC.

XI. Agenda

A proposed Agenda for the January 11, 2002 Status Conference is attached.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Joint Report No. 13 of Plaintiffs' and Defendants' Liaison Counsel was served on Plaintiffs' Liaison Counsel by hand and e-mail and by e-service to all parties by uploading same to Verilaw, on this 9th day of January, 2002.

**UNITED STATES DISTRICT COURT
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Monthly Status Conference January 11, 2002 9:00 a.m.
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AGENDA

Current Matters:

1. Update of Rolling Document Production and Electronic Document Production
2. State Liaison Counsel
3. Patient Profile Form and Authorization
4. Subpoena to FDA
5. Service List of Attorneys
6. Ongoing Studies/Subpoena to BevGlen
7. Third Party Subpoena Duces Tecum Issued by PSC

8. Motion to Enter Scheduling Order for Motion and Hearing on Class Certification
9. Plaintiffs' and Defendants' Respective Requests for Production of Documents

NEW ITEMS

1. Motions for Suggestion of Remand - J.C. Jackson and Ronald Helberg matters